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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,987	06/26/2003	Marc Christian Davis	DWP-1	5142
49578	7590	09/09/2005	EXAMINER	
SIMMONS PATENTS P.O. BOX 1560 LENOIR, NC 28645			GRAHAM, MARK S	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,987

Applicant(s)

DAVIS ET AL.

Examiner

Mark S. Graham

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 26-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-33 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-25, 32, and 33 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 1 and 13, there is no support in the originally filed disclosure for the limitations of the last 4 lines of the claim. In claims 32 and 33 there is no support for the particularly claimed sweet spot location.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7, 11, 13-16, 18, 19, 20, 24, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender in view of Smith. Note Bender at Col. 5, lines 16-19 specifically and the entire disclosure generally. Bender discloses the claimed device with the exception of the use of different first and second materials to obtain the different densities. However, such is a known technique in the art as taught by Smith. It would have been obvious to one of ordinary skill in the art to have used different materials in forming Bender's bat as well if it was desired to obtain particular densities in the different layers offered by different

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materials. With regard to the “sweet spot zone” or “center of mass” Bender’s bat barrel will inherently have such a zone between two predefined points.

Regarding claims 19 and 20, Bender does not specify the thickness of the lamina his outer (second and third) portions. However, he does disclose the inner lamina are of the claimed thickness and it would have been obvious to one of ordinary skill in the art to have used the same thickness when constructing Bender’s alternate embodiment bat to simply the step of cutting the lamina.

Concerning claims 11 and 24, both references teach the use of ash.

Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender in view of Smith and Cook. Bender in view of Smith obviates the claimed device for the reasons set forth above with the exception of the “apart” limitation. However, as disclosed by Cook it is known in the art to vary the density of the bat along the longitudinal axis of the bat by creating separate sections apart from one another. It would have been obvious to one of ordinary skill in the art to have done the same with Bender’s laminated sections to tailor the bat to a particular batter’s needs.

Claims 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender in view of Smith and Winterowd et al. (Winterowd). Bender in view of Smith obviates the claimed device with the exception of the type of bonding agent used. However, as disclosed by Winterowd bonding agents such as that claimed are known in the woodworking art for bonding laminates. It would have been obvious to one of ordinary skill in the art to have used such as Bender’s bonding agent to provide a secure bond.

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Claims 9, 10, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender in view of Smith and Burns et al. (Burns). Bender in view of Smith obviates the claimed device with the exception of the sealant/protectant. However, as disclosed by Burns sealant/protectants such as that claimed are known for use on bats. It would have been obvious to one of ordinary skill in the art to have used such on Bender's bat to protect it.

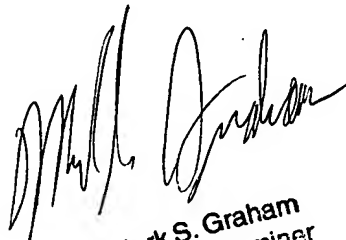
Claims 12, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender in view of Smith and You. Bender in view of Smith obviates the claimed device with the exception of the use of composites to form laminations. Bender uses wood for his laminations. However, as disclosed by You it is known in the art to use composites for such laminations as well. It would have been obvious to one of ordinary skill in the art to have used the same on Bender's bat to add strength to it.

Concerning claims 32 and 33, absent a showing of unexpected results the exact location of the "sweet spot zone" or "center of mass" would obviously have been up to the ordinarily skilled artisan depending on the particular bat characteristics desired by the batter.

Applicant's arguments have been considered. However, all of the substantive arguments pertain to the Bender reference alone rather than the combination of references which have been applied to the claims.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
9/1/05



Mark S. Graham
Primary Examiner